

## NOTICES OF EMERGENCY RULEMAKING

Under the Administrative Procedure Act, an agency may determine that adoption, amendment, or repeal of a rule is necessary for immediate preservation of the public health, safety or welfare and the notice and public participation requirements are impracticable. Under this determination, the agency may adopt the rule as an emergency and submit it to the Attorney General for review. The Attorney General approves the rule and then files it with the Secretary of State. The rule takes effect upon filing with the Secretary of State and remains in effect for 180 days. An emergency rule may be renewed for one or two 180-day periods if the requirements of A.R.S. § 41-1026 are met. If the emergency rule is not renewed or the rule is not permanently adopted by the end of the 180-day period, the emergency rule expires and the text of the rule returns to its former language, if any.

### NOTICE OF EMERGENCY RULEMAKING

#### TITLE 17. TRANSPORTATION

#### CHAPTER 4. DEPARTMENT OF TRANSPORTATION MOTOR VEHICLE DIVISION

#### PREAMBLE

1. **Sections Affected**  
R17-4-506
- Rulemaking Action**  
Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**  
Authorizing statute: A.R.S. § 28-366.  
Implementing statutes: A.R.S. §§ 28-3306(A)(3), 28-1382, as added by Laws 1998, Ch. 302, §§ 23, effective after November 30, 1998; A.R.S. § 28-695, as added by Laws 1998, Ch. 159, § 4, effective August 21, 1998; A.R.S. 28-672, as added by Laws 1998, Ch. 243, § 1, effective August 21, 1998; and A.R.S. § 28-644(A)(2), as added by Laws 1998, Ch. 159, § 1, effective August 21, 1998.
3. **The effective date of the rules:**  
December 31, 1998
4. **Is this rulemaking a renewal of a previous emergency rulemaking?**  
No.
5. **The name and address of agency personnel with whom persons may communicate regarding the rule:**  
Name: Lynn S. Golder, Rules Attorney  
Address: Arizona Department of Transportation  
Motor Vehicle Division  
4747 North 7th Avenue  
Phoenix, Arizona 85013  
Telephone: (602) 255-7941  
Fax: (602) 241-1624
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**  
The Arizona Department of Transportation, Motor Vehicle Division (Division) initiated this rulemaking on an emergency basis in order to amend R17-4-506(B) by assigning appropriate demerit points to each of the 5 new traffic offenses that were enacted by the legislature in 1998. The new traffic offenses are:
  - a. Extreme DUI;
  - b. Aggressive driving;
  - c. Running a red light, stop sign or yield sign, or making an improper left turn and the violation results in an accident causing death to another person;
  - d. Running a red light, stop sign or yield sign, or making an improper left turn and the violation results in an accident causing serious physical injury to another person; and
  - e. Driving over or across any part of a gore area or parking in any part of a gore area.These new statutory provisions require emergency amendment of R17-4-506(B) to reflect appropriate demerit points based on the severity of the offense. Without the rule changes, the new offenses would default to 2 points pursuant to the rule. It would be a disservice to the citizens of this state to delay the implementation of the higher and more correct demerit points on these new

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offenses. Including the 5 new violations in subsection (B) of the point-system rule will enable the Division to add the correct number of demerit points to the driving record of a person convicted of violating 1 of the new statutes. The Division will be better able to protect the health, welfare, and safety of Arizona motorists by requiring these potentially dangerous vehicle operators to attend training and educational sessions, or by removing such vehicle operators from the roads through the suspension of their driver licenses.

In addition to adding the 5 new violations to R17-4-506(B), the Division is also making the following important changes to enhance the clarity and understandability of the subsection:

- a. Correcting the statutory references within the subsection to be consistent with the current numbering of A.R.S. Title 28.;
- b. Moving the word "Points" from the left margin to the right margin;
- c. Adding "or actual physical control of a vehicle" to R17-4-506(B)(1) and (B)(3); and
- d. Restructuring R17-4-506(B)(3) to clarify the traffic offenses referred to in that subsection.

R17-4-506 was last amended in 1985, nearly 15 years ago. Simultaneous with this emergency rulemaking, the Division is also undertaking regular rulemaking to make necessary changes, with public participation, to the entire point-system rule, including non-urgent changes to the style and word choice of R17-4-506(B). The Division's Notice of Rulemaking Docket Opening for the regular rulemaking is published at 4 A.A.R. 3547, October 30, 1998.

7. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

Not applicable.

8. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

9. **The summary of the economic, small business, and consumer impact:**

Because this is the initial making of an emergency rule pursuant to A.R.S. § 41-1026, A.R.S. § 41-1055(D) exempts the agency from providing an economic, small business and consumer impact statement.

10. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Not applicable.

11. **Incorporations by reference and their location in the rules:**

Not applicable.

12. **An explanation of the situation justifying the rule's adoption as an emergency rule:**

Laws 1998, Ch. 302, § 23 (HB 2053), adding the new offense of driving or actual physical control of a vehicle while under the extreme influence of intoxicating liquor (extreme DUI), was approved by the Governor on June 1, 1998, and filed in the Office of the Secretary of State on June 3, 1998. Laws 1998, Ch. 243, § 1 (HB 2327), adding the new offenses of failure to comply with certain traffic laws resulting in an accident that causes serious physical injury or death to another person, was approved by the Governor on May 29, 1998, and filed in the Office of the Secretary of State on June 2, 1998. Laws 1998, Ch. 159, §§ 1 and 4 (HB 2311), adding the new offenses of driving over or across or parking in any part of a gore area, and aggressive driving, was approved by the Governor on May 26, 1998, and filed in the Office of the Secretary of State on May 17, 1998.

The notice and public participation requirements of the Administrative Procedure Act were impracticable because of the time constraints imposed by the above legislation, resulting in insufficient time for regular rulemaking. No delay or inaction on the part of the Arizona Department of Transportation, Motor Vehicle Division created the emergency situation, and the emergency situation could not have been averted by timely compliance with the notice and public participation requirements.

The average time for regular rulemaking by all State agencies is approximately 304 days from the docket opening notice to approval by the Governor's Regulatory Review Council. The average time for regular rulemaking by the Division is approximately 270 days. Regular rulemaking would potentially result in a July 1999 effective date for the R17-4-506(B) amendments, far beyond the December 1, 1998, effective date of the extreme DUI statute. The effective date for the other 4 offenses was August 21, 1998. Following the legislature's enactment of the 5 new offenses, the Division reviewed the 3 House Bills, distilled the pertinent information from the bills and determined the appropriate demerit points for each of the 5 new offenses in consultation with representatives of law enforcement. The Division needed to take these steps to prepare for the amendment of R17-4-506(B).

Timely implementation of the demerit points for the 5 new statutory offenses directly relates to the public health, safety, and welfare. Each of the 5 new offenses to be included in subsection (B) addresses a serious moving violation. Assessment of the appropriate demerit points will enable the Division to take appropriate corrective action as to vehicle operators convicted of violating any of the new offenses.

After November 30, 1998, a person with an alcohol concentration of 0.18 or more within 2 hours of driving, or having actual physical control of a vehicle, will be guilty of extreme DUI. The extreme DUI alcohol concentration is almost double the 0.10 alcohol concentration for driving under the influence. Aggressive driving, denominated "road rage" in the media, makes Arizona roads increasingly dangerous. Under the new A.R.S. § 28-695, aggressive driving occurs when a vehicle operator engages in a course of conduct that combines an unsafe vehicle speed with at least 2 of the listed moving violations, creating "an immediate hazard to another person or vehicle." Both extreme DUI and aggressive driving call for the maximum number of demerit points (8) upon

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conviction because of the severity of the vehicle operator's behavior on the roads.

New A.R.S. §§ 28-672 establishes 2 traffic offenses: running a red light, stop sign or yield sign, or making an improper left turn at an intersection that results in an accident causing either serious physical injury or death to another person. The Division has determined that 4 demerit points are warranted when another person sustains serious physical injury as a result of the commission of such an offense, and 6 demerit points are appropriate when another person dies.

Finally, A.R.S. § 28-644(A)(2) creates the new offense of driving over or across any part of a gore area, or parking in any part of a gore area. A "gore area" is the area indicated by 2 wide solid white lines between a surface road and a freeway entrance or exit ramp. This offense is in response to the death of a law enforcement officer who, while performing the duties of his job, was struck by a vehicle driven over or across a gore area. The Division has determined that 3 demerit points are appropriate upon conviction of a gore area violation.

The continued health, safety, and welfare of the public require the Division to immediately assign the appropriate demerit points to the 5 new traffic offenses enacted during the 1998 legislative session. Taking suitable corrective action based on driving record demerit points can lessen the incidence of injury or death to Arizona motorists by reducing the likelihood that drivers convicted of these serious traffic violations will engage in similar driving behavior in the future, or even by removing such drivers from the roads entirely. The Division's ability to take suitable corrective action should begin without further delay. Preventing even 1 injury or death on the Arizona roadways warrants the emergency amendment of R17-4-506(B).

**13. The date of the Attorney General's approval of the emergency rule:**

December 31, 1998

**14. The full text of the rules follows:**

**TITLE 17. TRANSPORTATION**

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION  
MOTOR VEHICLE DIVISION**

**ARTICLE 5. DRIVER LICENSES**

Section

R17-4-506. Driver license point system

**ARTICLE 5. DRIVER LICENSES**

**R17-4-506. Driver license point system**

A. No change.

B. Point system. For the purpose of determining under A.R.S. § 28-3306(A)(3) 28-446(A)(3) when there has been a such frequency of convictions or judgments of serious offenses against traffic regulations governing the movement of vehicles as to warrant suspension or to require any licensee to attend and successfully complete approved training and educational sessions designed to improve the safety and habits of drivers, the following convictions or judgments shall be have assigned to them the points indicated below:

Points

Points

- |  |   |
|--|---|
| 1. Conviction of violation of A.R.S. § 28-1381 28-692, driving or actual physical control of a vehicle while under the influence of intoxicating liquor or drugs.  | 8 |
| 2. Conviction of violation of A.R.S. § 28-1382, driving or actual physical control of a vehicle while under the extreme influence of intoxicating liquor.  | 8 |
| 23. Conviction of violation of A.R.S. §§ 28-1381 28-692, driving or actual physical control of a vehicle while under the influence of intoxicating liquor or drugs, and 28-693, reckless driving, when both violations are charged in one citation, driving while under the influence of intoxicating liquor or drugs and with reckless driving. | 8 |
| 34. Conviction of violation of A.R.S. § 28-693, reckless driving.  | 8 |
| 45. Conviction of violation of A.R.S. § 28-708, racing on highways.  | 8 |
| 56. Conviction of violation of A.R.S. § 28-695,  |   |

aggressive driving.

8

67. Conviction or judgment of a violation of A.R.S. §§ 28-662, 28-663, 28-664, 28-665, leaving the scene of an accident.

6

8. Conviction or judgment of a violation of A.R.S. § 28-672(B), failure to comply with a red traffic control signal, failure to yield the right of way when turning left at an intersection or failure to comply with a stop sign or yield sign, and the failure results in an accident causing death to another person.

6

9. Conviction or judgment of a violation of A.R.S. § 28-672(A), failure to comply with a red traffic control signal, failure to yield the right of way when turning left at an intersection or failure to comply with a stop sign or yield sign, and the failure results in an accident causing serious physical injury to another person.

4

610. Conviction or judgment of a violation of A.R.S. § 28-701, speeding.

3

11. Conviction or judgment of a violation of A.R.S. § 28-644(A)(2), driving over or across or parking in any part of a gore area.

3

712. Conviction or judgment of a violation of any other traffic regulation governing the movement of vehicles.

2

C. No change.

D. No change.

E. No change.

F. No change.

G. No change.

H. No change.

I. No change.